The BAR ASSOCIATION BULLETIN

Entered as second-class matter, April 13, 1926, at the Postoffice at Los Angeles, California, under the Act of March 3, 1879

Volume 3, Number 10 JANUARY 19, 1928 5c a copy: $1 a year

Official Publication of the Los Angeles Bar Association, Los Angeles, Cal.

In This Issue

Important Meeting of Association
JANUARY 20, 1928
See President's Page for Particulars

Printed by PARKER, STONE & BAIRD COMPANY
Law Printers and Engravers
241 East Fourth Street Los Angeles, California

The BAR ASSOCIATION BULLETIN

Vol. 3 JANUARY 19, 1928 No. 10

Published the first and third Thursdays of each month by the Los Angeles Bar Association and devoted to the interests of the Association.

Office: 535 Title Insurance Building, Los Angeles
Fifth and Spring Streets
Telephone MEtropolitan 2000, Station 162

LOS ANGELES BAR ASSOCIATION

(City and County—Organized 1888)

Members of the Bar Association: Pease note the advertisers in the BULLETIN. This is YOUR magazine, and its financial success is dependent upon the patronage of organizations having messages to convey to the legal profession.

California's New Arbitration Law

By WILLIAM T. CRAIG *of the Los Angeles Bar*

(Address delivered at meeting of Los An geles Bar Association, December 21, 1927)

Since the adoption of the Codes in California in 1872, Title X of the Code of Civil Procedure covering sections 1281 to 1290 inclusive of that Code has covered the law on the subject of arbitration in this state. Very few amendments have ever been adopted to the original provisions of this arbitration statute. This statute has never been satisfactory for the reason that under it a contract for arbitration was not enforcible. Arbitration in California has therefore taken place by the voluntary agreements of the parties and enforced either under the rules and regulations of oranizations to which the parties belong or by the moral effect of the agreement. Where the losing party was bound by neither of these considerations he might repudiate the contract without consequence to himself. Arbitration nevertheless has been used to an increasing extent in California for the settlement of trade disputes and a constantly increasing demand has been made for an adequate statute making arbitration agreements legal and the awards enforcible. Chambers of commerce and other commercial organizations have given great attention to the subject in recent years, and particularly since the adoption in 1920 of the arbitration law of New York. After the passage of this act the New York Chamber of Commerce appointed the necessary committees and obtained the necessary consent of its members to act as arbitrators so that thousands of disputes have been settled by the action of that body since the passage of the law.

The Arbitration Society of America has for many years undertaken to urge and cooperate in the enactment of proper arbitration statutes in the various states. The board of governors of this society is composed of leading merchants, bankers, lawyers and editors of the country. This society has published and distributed throughout the United States a Model Arbitration Act. This act has been endorsed by the American Arbitration Association, the American Bankers Association, the American Society of Certified Public Accountants, the Committee on Arbitration of the Chamber of Commerce of the State of New York, the Motion Picture Producers and Distributors of America, the National Association of Credit Men, and other national organizations. The Model Act follows closely the New York law.

Subsequent to the adoption of the law in New York, a similar statute was enacted in 1923 in New Jersey, and in 1925 in Massachusetts and Oregon, and in the same year Congress adopted the United States Arbitration Act.

In 1925 there was introduced in the assembly of the California legislature a bill practically a duplicate of the New Jersey law. The Chambers of Commerce of San Francisco and Los Angeles appointed committees to urge the passage of this act. It failed of passage at that session. The Los Angeles Chamber of Commerce thereupon appointed a committee of lawyers called a Committee on Laws and Arbitration. This committee worked diligently upon an arbitration statute for California. After formulating what they considered a satisfactory bill they found that Assemblyman Jacobson of San Francisco had offered in the Assembly at the 1927 session of the legislature the same bill that had been offered in 1925—practically a copy of the New Jersey law—and that the San Francisco Chamber of Commerce favored this bill. The Committee on Laws and Arbitration thereupon suggested twenty amendments to the bill. The bill with these amendments received the approval and active support of the Chambers of Commerce of San Francisco and Los Angeles, of the Los Angeles Credit Men's Association, the Los Angeles Wholesalers' Board of Trade and other commercial organizations. It also had the approval of the California Judicial Council. It was finally passed with the suggested amendments, with one change suggested by the Judicial Council, and an added provision that arbitrations under the act should, unless agreed upon by the parties after the controversy arises, be held within the state of California, and with a provision that the act shall not apply to contracts pertaining to labor. It therefore may be said that

the California law is the product of the demands of the business interests of the state. It will also be found that the California law is practically the New Jersey law with such amendments as put it in harmony with our codes and our judicial system, a few provisions being added which were considered necessary to a more complete statute on the subject.

It will perhaps serve no purpose to enlarge very extensively upon the question of why the New Jersey law was taken as a model rather than others. It may be stated in brief that the New Jersey statute has all the good features of the New York law and some additional satisfactory provisions. The Massachusetts and Oregon laws provide that all arbitration awards shall be entered as court judgments—an entirely unnecessary and cumbersome scheme. Experience has shown that only an exceedingly small fraction of arbitration awards are made court judgments in those states which only permit but do not require the awards to be entered as judgments. The New Jersey law omitted many technicalities found in some of the other statutes, such as requiring the arbitrators to take an oath of office, and prescribing the form of the arbitration contract. On the contrary the New Jersey law has no provision for the taking of depositions and the manner of enforcing the award does not accord with our procedure, but in general it seems to be the most satisfactory of the various statutes on the subject.

The subject of these arbitration statutes has been considered at various times by the American Bar Association and by the California Bar Association. In 1924 and again in 1925 the committee of the California Bar Association reported in favor of adopting the New York law in California. At both conventions such opposition to the adoption of the report of the committee was voiced that the report was referred back to the committee and at the convention in 1926 the committee reported in favor of making no change in the California law and this report was adopted. In 1925 the American Bar Association spent some time in arguing the question and by a large majority the approval of the New York law was denied. The main contention of those objecting to the scheme was that contracts of arbitration should be limited to those entered into after the controversy arose, and that contracts which provided for arbitration of future disputes should not be permitted. The answer of the commercial world to these objections is that numberless arbitrations are satisfactorily disposing of disputes that have arisen under contracts that required arbitration in the event of such disputes. The miscarriage of justice from their point of view as often happens by the application of legal technicalities in the courts as by the disregard of rules of evidence and all other technicalities in arbitrations. There is no doubt that even the courts doubt the ancient rule that makes a contract void which prevents the parties from seeking redress for wrongs in the courts. At least the rule is being modified in this country to the extent of giving the parties the right to substitute a method of their own for establishing the rights of the parties and the extent of the redress, limiting the action of the courts to the enforcing of the remedy. The new California Arbitration Law has reached farther out into this new field than any law yet passed on the subject and its operation upon the rights of the people of this state will only be determined after several years of experience. No doubt the arbitration of questions of fact will be found reasonably satisfactory while the arbitration of the rights of the parties where they depend upon legal questions will present more difficulties.

What is the scheme provided for by the new law?

Section 1280 provides that a provision in a written contract to settle by arbitration a controversy thereafter arising out of the contract or the refusal to perform it, or a contract to settle an existing controversy by arbitration, is valid, enforcible and irrevocable except upon such grounds as exist in law or equity for the revocation of any contract, but that the act shall not apply to contracts pertaining to labor. This section adequately provides for contingencies that many of these laws cover by many details —such as providing that an infant or an incompetent or drunken person, or a person otherwise incapable of making a contract cannot enter into an arbitration agreement.

Section 1281 provides that persons may submit in writing to arbitration any controversy existing between them at the time of the agreement to submit, which arises out of a contract or refusal to perform it, or

the violation of any other obligation, and may agree that a judgment of a court of record, specified in the writing shall be entered on the award, and may specify the court where the judgment is to be entered, but if this is not done then it shall be entered in the court of the county where the arbitration was had.

Section 1282 provides that any party aggrieved by the failure, neglect or refusal of another to perform the agreement to arbitrate my petition the superior court of the county where either resides for an order directing that the arbitration proceed. Five days personal notice of the hearing shall be given. If the court should find that the making of the agreement or failure to arbitrate is not in issue, then it shall order the arbitration to proceed. If the making of the contract or the failure to arbitrate is put in issue, then the court shall proceed to a summary trial of this issue. The party alleged to be in default, but not the petitioning party, shall have the right to demand a jury trial of these issues. If a finding is made or verdict rendered that no agreement was made or no default existed then the proceeding shall be dismissed. Otherwise the court shall summarily order the arbitration to proceed.

Section 1283 provides that if the agreement provides a method of selecting the arbitrators or umpire this method shall be followed, but if no method is provided or any party fails to avail himself of it or if for any other reason the selecting of an arbitrator or umpire fails or if there is a failure of an arbitrator to attend or fulfill his duties, then upon application of any party to the controversy the court shall designate the arbitrator or arbitrators or umpire; and unless otherwise provided the arbitration shall be by a single arbitrator. One of the amendments to this section suggested by the Committee on Laws and Arbitration of the Chamber of Commerce was the provision for the appointment of another arbitrator where the one appointed failed to attend the arbitration or to perform his duties. Experience in arbitrations has shown that they fail by the wilful refusal of an arbitrator of one of the parties to attend the arbitration.

Section 1284 provides that where an action is begun on any contract providing for an arbitration of the controversy, the court shall stay the action until the arbitration is had.

Section 1285 provides that any application to the court made under the act shall be heard in a summary way in the manner provided by law for hearing of motions.

Section 1286 provides that all of the arbitrators must sit unless the parties agree otherwise; that arbitration shall be held in the state of California unless all the parties to the contract, after the controversy arises, shall otherwise agree in writing. This last provision was inserted in the law at the suggestion of Mr. Jefferson P. Chandler and was meant to prevent non-residents from obtaining contracts requiring arbitrations of disputes to be held in foreign states. This section provides that the arbitrators may require witnesses to attend before them bringing any book or paper, the witness fees to be the same as in actions at law. Subpoenas shall issue in the name of the arbitrators and signed by them or a majority of them, directed to the person and served in the same manner that subpoenas are served in courts of record; if the witness refuses or neglects to appear, then upon petition to the superior court the witness may be ordered to appear and be punished for contempt for failing to do so. The arbitrators are given power to approve the taking of depositions, to appoint a time and place for the hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence and to make the award. Upon petition approved by a majority of the arbitrators the superior court may direct the taking of depositions in the same manner and for the same reasons as depositions are taken in the superior court.

Section 1287 provides that at any time within three months after the award is made, unless the time be extended in writing by the parties, any party to the award may apply to the superior court for an order confirming the award, and the court shall grant this unless the award is vacated, modified or corrected. Five days' notice of the application shall be given to the adverse party. This section also provides that all awards must be in writing and acknowledged in the same manner as a deed. In providing that the application for the order confirming the award must be made within three months there was a departure from

the New York and Federal rule which allows one year for this to be done. It is not clear why the New Jersey law required the prevailing party to get his judgment within so short a time. The Committee on Laws and Arbitration recommended an amendment making this time six months, since they saw no reason why the prevailing party should be compelled to proceed aginst the losing party if it was satisfactory to him to extend the time for performance. The Assembly adopted the suggested amendment and the Senate reinstated the time at three months by reason of the recommendations of the Judicial Council to that effect. The provision, however, that the time can be extended by the agreement of the parties fully takes care of the question.

Section 1288 provides that the superior court of the county where the arbitration was had may vacate the award upon application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or undue means.

(b) Where there was corruption in the adbitrators or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy; or any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

Where the award is vacated and the time within which the award was to be made has not expired, the court may in its discretion direct another hearing by the arbitrators.

Section 1289 provides that the court may modify or correct the award:

(a) Where there was an evident miscalculation of figures or mistake in the description of any person, thing or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision.

(c) Where the award is imperfect in a matter of form not affecting the merits of the controversy.

The court must modify and correct the award so as to effect the intent thereof and promote justice between the parties.

Section 1290 provides that the motion to vacate, modify or correct the award must be served upon the party or his attorney within three months after the award has been delivered, the motion to be the same as prescribed by law for the service of a notice of motion in an action. This section also provides for an order staying proceedings on the award until the motion is heard.

Section 1291 provides that upon the granting of an order confirming, modifying or corecting an award the judgment shall be entered in conformity therewith.

This section also provides what papers shall be filed when the application is made.

The judgment when rendered by the court shall be docketed as if it were rendered in an action.

Section 1292 provides that the judgment when entered shall in all respects be subject to the provisions of law relating to a judgment in an action and may be likewise enforced.

Section 1293 provides that an appeal may be taken from an order confirming, modifying, correcting or vacating an award or from a judgment entered upon an award as from an order or judgment in an action.

Such in brief is the arbitration scheme adopted in California. It is not perfect and can be made so only after considerable experience has suggested the necessary modifications. No provisional remedies are provided for, and without doubt it will be found that remedies like that of attachment should be given to the party to the arbitration contract. The Massachusetts law provides for the levying of the attachment by filing the suit and then for the stay of proceedings in the attachment suit until the arbitration has been completed. There are other remedies given to the plaintiff in an action which the arbitration law fails to provide for. Since speed is the greatest advantage of the arbitration agreement the absence of the provisional remedies is not of such great importance to the parties as in an ordinary law suit.

But the opponents of arbitration rest their objections upon two propositions—that no contract of arbitration should be valid which provides for the settlement of a dispute that has not yet arisen and that arbitration necessarily involves the determination of legal questions by those who

will frequently know little about the law. The business world has little patience with either of these objections. The ordinary man is quite willing that someone shall determine his rights and his wrongs without reference to legal technicalities. The layman feels that legal technicalities determine lawsuits, rather than the equities of the case. He is quite willing to waive a right guaranteed to him by some technical law, if he can be assured of that which the facts indicate is just. Then again where legal questions are necessarily involved the parties will ordinarily select lawyers for their arbitrators. In fact this is frequently done.

To limit arbitration to disputes that have already arisen is to destroy the purpose of it. The makers of a contract desire speedy determination of questions in dispute. Speedy determination of these disputes is of as much importance as the other benefits under the contract. And moreover the amicable settlement of such matters is to the commercial world one of the greatest advantages of arbitration. A lawsuit seldom leaves the parties friendly and an arbitration of itself seldom creates enmity. It can almost be said to be an amicable way of settling differences between men.

The old objection that it is against public policy to oust the courts of their jurisdiction or to make a contract that will deprive a person of the right of recourse to the courts is gradually melting away under the changed conditions of business and society. Public policy depends entirely upon what the effect of a measure is upon society. So far as modern arbitration is concerned it is fast becoming an accepted method of settling controversies in all the states. During 1927 arbitration laws were introduced in the legislatures of more than a dozen states and were enacted by most of them. The present attitude of the courts to this demand of the modern commercial world may be indicated by the opinion of Judge Lucien Shaw in rendering the decision of the Supreme Court of California in the case of Utah Construction Co. v. Western Pacific Ry. Co. found in 174 California Reports at page 156. Judge Shaw there says: "The policy of the law in recognizing arbitration agreements and in providing by statute for their enforcement is to encourage persons who wish to avoid delays incident to a civil action to obtain an adjustment of their differences by a tribunal of their own choosing * * * *. It has been said that by reason of the fact that the proceeding represents a method of the parties' own choice and furnishes a more expeditious and less expensive means of settling controversies than the ordinary course of judicial proceedings it is the policy of the law to favor arbitration. Therefore every reasonable intendment must be indulged to give effect to such proceedings."

It has been very truly said that there are some disputes that should not be litigated and there are some that should not be arbitrated. No important arbitration contract should be entered into without the advice of counsel and as a matter of fact few are entered into without such advice, except those that arise from contracts put out by organizations or associations having uniform arbitration contracts as part of their business policy. When arbitration shall have become one of the accepted methods of settling disputes in the United States, as it is now fast becoming, the legal profession will be found assisting in the perfection of uniform contracts and uniform methods of appointing arbitrators and securing of awards that will protect the public and secure the results that are wished for and demanded by the business world.

We are fortunate that many of the legal questions that may arise under the California law have already been passed upon by the courts of New York and New Jersey. For instance it has been held in New York that it is misbehavior of an arbitrator where he makes an independent investigation of the facts without the knowledge of the other arbitrators. See Berizzi v. Kausz, 239 N.Y. 315. It has also been determined that the statute applies to arbitration contracts made before the passage of the law, but that suits commenced on such a contract before the act went into effect would not be stayed under that law. See Berkowitz v. Arbib, 230 N.Y. 261.

The constitutionality of the law was challenged in New York shortly after the passage of the act on the ground that it deprived the parties of a trial by jury, which was guaranteed to them by the constitution, that the law was retroactive and that it violated the constitution of the United States because it impaired the obligation of a contract. These questions were all determined adversely to the party raising them in the interesting decision by Judge

Cordozo in Berkowitz v. Arbib. Many other questions involving the construction of the law have also been determined, and these decisions will serve as a guide to the construction of the California law on account of the close similarity of the California law to those of New York and New Jersey.

Finally, what has been the experience up to this time of the operation of the new statutes? We are not without information on this subject. Thousands of arbitrations have taken place annually by the voluntary consent of the parties to contracts with more than thirty great business organizations in California. The Chambers of Commerce of San Francisco and Los Angeles are equipping themselves with departments dedicated to the successful operation of arbitrations. The Chamber of Commerce of the State of New York has handled successfully thousands of these arbitrations.

Mr. Will Hays writing in *System* for September 1926 in relation to the results of arbitration, maintains that as every purchase and sale may end in a lawsuit, expensive in money and good will, arbitration is the surest way to save these losses. He says truly that if you sue a customer you may recover your money but you lose your customer. Business men do not ordinarily deal with enemies, and so when the contract is made the parties are friendly, but if a dispute arises which ends in a lawsuit then they become enemies. He maintains that seventy-five per cent of the lawsuits commenced involve no questions of law but only questions of fact and these questions of fact can better be determined by arbitrators who are conversant with the line of business of the disputants than by a jury who in addition to determining the facts is limited in its knowledge of the facts by rules of practice and technicalities of evidence.

When Mr. Hays became associated with the motion picture industry there were thousands of suits pending throughout the country between producers and distributors of films. He organized thirty-two arbitration tribunals throughout the country, each composed of three producers and three distributors. In every contract for a film thereafter made there was a clause binding each party to submit any dispute arising under the contract to the decision

(Continued on Page 28)

Proposed Official

BAR ASSOCIATION BUILDING

On Flower Street (between Sixth and Seventh Streets)

For Information

PHONE MR. ELKINS

Vandike 2995

The President's Page

Fellow Members,
Los Angeles Bar Association:

JANUARY MEETING

At the January meeting in the Chamber of Commerce banquet room, 1151 South Broadway, on January 20 at 6 p.m., Los Angeles Bar Association will have as guests of honor the recently elected Governors of the State Bar of California. A number of them will be asked to deliver short talks upon the policies of the Board in so far as they have been determined and to give suggestions as to matters upon which the advice of the bar is desired.

Mr. O. K. Cushing of San Francisco will be asked to speak on "Requirements for Admission to Practice."

Mr. Walter H. Stammer of Fresno, and formerly president of Fresno County Bar Association, will speak on the subject of "Co-operation between the State Bar and Local Bar Associations," dealing particularly with the future function of local bar associations.

Mr. Eugene Daney of San Diego will discuss "Proposed Rules of Conduct."

Mr. Hugh Henry Brown of San Francisco, who is well remembered here for his eloquent, informative address delivered before our Association some time ago, will advocate the regulation of procedure by rule of court. The address of Mr. Brown will be particularly timely by reason of the fact that our Section on Civil Procedure will bring in a report approving this proposal and will offer a resolution for adoption by the Associatin. It is suggested that the Supplement to the March, 1927 number of the American Bar Association *Journal* be studied and, if possible, also the report upon "Rule-Making Power of the Courts in the Several States," issued by the Committee on Conference of Bar Association Delegates of the American Bar Association, which contains a complete resumé of the status of the rule-making power in the various states of the Union. General discussion and debate will be permitted — speeches limited to three minutes.

Other enjoyable features of the program will be, "History of America," by Mr. Milton Schwartz, and music by the Bar Association Quartette, headed by Mr. Everett Mattoon.

THE HICKMAN CASE

The Hickman case has again brought to the foreground of discussion by prominent lawyers and judges the problem of crime prevention. The sub-committee on "New Plan of Scientific Social Criminal Procedure" of Los Angeles Bar Association has directed a letter to the Trustees of the Association requesting action upon their report which was submitted and debated at the November meeting of the Bar Association.

If the proposals of the Criminal Law Section of Los Angeles Bar Association had been in force, Marion Parker would be alive today. Science, through the psychiatrist, psychologist, criminologist, alienist and neurologist, has made remarkable advances in the detection of those criminal and abnormal tendencies which make the individual a potential danger to society. Our Criminal Law Section advocates a "detention laboratory" where the convict is thoroughly examined by trained criminologists, physicians and other scientific experts. The Committee states that:

> "One of the cardinal features of this plan is that no prisoner would ever be released outright from institutional supervision without first serving a probationary period of parole of at least six months; and an absolute requirement before an application for parole could be heard would be satisfactory credits from that institution carrying the highest type of reformatory work."

William Edward Hickman had perpetrated a long series of deliberate forgeries. He was apprehended June 16, 1927, was found guilty June 21, 1927, and was released on probation on July 22, 1927. In view of Hickman's confession, it is not inappropriate to point out that Hickman's history and other factors ascertainable at the time of his arrest for the forgeries, if press reports are true, then indicated the necessity of his prolonged incarceration as a measure of public protection. In any event, the six months' observation period advocated by the Bar Association Committee would have continued until December 21, 1927 and the many robberies and offenses now admitted by Hickman would not have

occurred and the most horrible crime of the century would have been prevented.

I recall the time when finger-print identification was pooh-poohed and ridiculed. Now its praise is upon every tongue. The scientific criminologist will soon be accorded equal recognition in the popular mind. It may well be that Hickman, having been given this six months' scientific observation, would never have been released to menace society.

A few thoughtless persons have asserted that the scientific treatment of the criminal after conviction is on a par with "locking the stable after the horse is stolen." This is not so. We have found that most crimes are perpetrated by the habitual and professional criminal. Read the list of terrible offenses to which this ninteen-year old arch fiend has confessed! The probation theory is idealistic and wholesome but we must adopt scientific means to prevent its being used to turn loose upon society depraved enemies of the social order. A considerable percentage of all serious crimes could, in my opinion, be prevented by the adoption of a plan of careful, deliberate, scientific and historical investigation of every convicted criminal in order that those indicating fixed criminal tendencies at least be restrained for a considerable period of time, if not permanently.

The members of the Special Committee of the Bar Association making the recommendation referred to, and which has the endorsement of the Criminal Law Section, are, Miss Caroline Kellogg, Chairman, Judge Chas. W. Fricke, Dean Justin Miller, Hon. Wm. Aggeler, Mr. Jud Rush and Judge H. M. Willis. Assemblyman Walter J. Little is chairman of the Section on Criminal Law, which has a large membership consisting of judges, prosecutors and attorneys otherwise interested in criminology.

CATCHING UP WITH COURT BUSINESS

It is gratifying indeed to note the systematic manner in which the judges have attacked the problem of putting the work of the courts on a business-like basis. The master calendars will be called at 9:30, allowing the various trial judges to accomplish uninterruptedly a full day's work. The

(Continued on Page 29)

To the Members of Los Angeles Bar Association

In line with the policy of the Association in the encouragement of a wholesome fraternal spirit among its members, and acting upon the suggestion of many members of the bar, the Trustees of Los Angeles Bar Association have appointed a Golf Committee.

This is to request that the form below be filled out and returned by all members of the Association who are interested in this sport and who would care to play in tournaments sponsored by the Committee. There will be no dues, the only requirement being a nominal entry fee at each tournament to provide the prizes.

The form when filled out should be mailed to

E. E. NOON,
Chairman, Golf Committee,
Los Angeles Bar Association,
830 Merchants National Bank Bldg.,
Los Angeles, California.

TO THE GOLF COMMITTEE
of LOS ANGELES BAR ASSOCIATION:

I am interested in golf and wish to enter Association golf events:

My Club is .....

My handicap is .....

Name .....

Phone ..... *Address* .....

THE ATTORNEYS' BUILDINGS

On page 11 of this issue appears an advertisement of the proposed Bar Association Building, to be erected on Flower Street between Sixth and Seventh Streets; and on the two center pages of the issue is an advertisement of the proposed Guardian Building, likewise designed as an exclusive attorneys' building, to be located at 218-224 South Broadway.

To obviate any possible confusion on the part of members of the bar, it should be pointed out that the Bar Association Building on Flower Street is to be the official, and the only official, building of Los Angeles Bar Association, whereas the Guardian Building is an entirely distinct and separate enterprise.

These buildings, however, are in no sense competitive. It is felt that each of them will fill a desired need, and that there is room for both, especially so in view of the fact that they will be located at a considerable distance apart, in different sections of the business district. Both of the buildings will embody features peculiarly advantageous to the attorneys of the city, and both should serve as effective mediums for increased efficiency in practice and for greater solidarity of the members of the bar.

AN INDEX OF THE BULLETIN

In the past, many requests have come to the BULLETIN office from members of the Bar Association and also from law librarians in various parts of the country, for an index of the BULLETIN. To meet this long-felt need, Mr. Maurice Saeta of the Bulletin Committee has undertaken the preparation of a complete index of Volumes 1 and 2 and of Volume 3 to date. This index is now nearing completion and will be published in the near future. A large proportion of the subscribers to the BULLETIN have been keeping a complete file of the numbers as they appear, and to them, as well as to other attorneys who now desire to start keeping a file, the index should prove of material aid.

Exclusively for Attorneys

The new GUARDIAN BUILDING, with its unique parking arrangement, general law library and master service department, should attract the attention of every attorney who appreciates saving valuable time and money. ¶In design, construction, interior finish and equipment, this Class "A" limit-height structure will be modern in every detail. ¶The exterior finish will be of terra cotta and artificial stone. An arcade entrance twenty-eight feet in width on Broadway, with marble lobby and ceiling done in polychrome colors, will pass through the center of the building to high speed passenger and automobile elevators in the rear. ¶With the wide, light courts on each side of the building, all offices will practically have an outside exposure. ¶The easy access to the Broadway, Second and Third street tunnels should avoid considerable congested traffic. ¶The following special features will be included in the flat rental charge per office lease:

SPECIAL PARTITIONING:

AUTOMOBILE PARKING:

LAW LIBRARY:

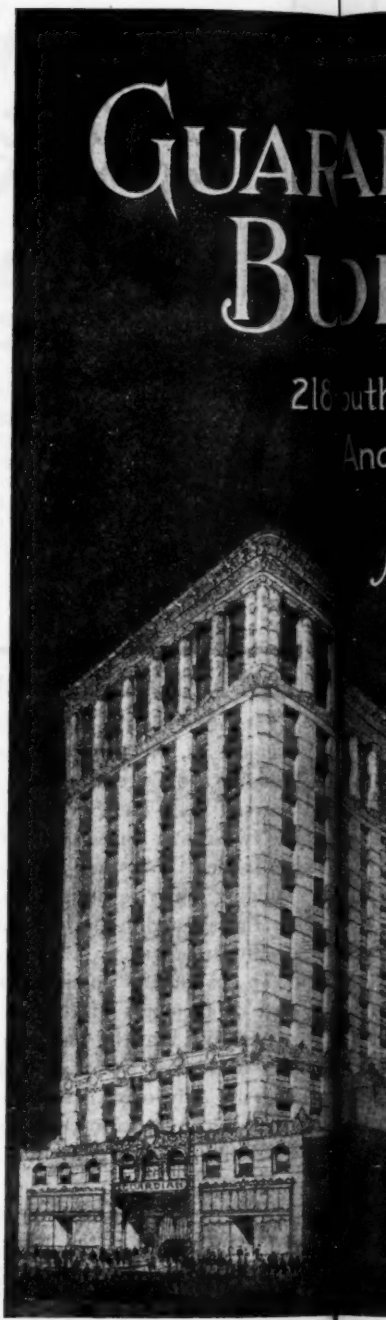
MESSENGER SERVICE:

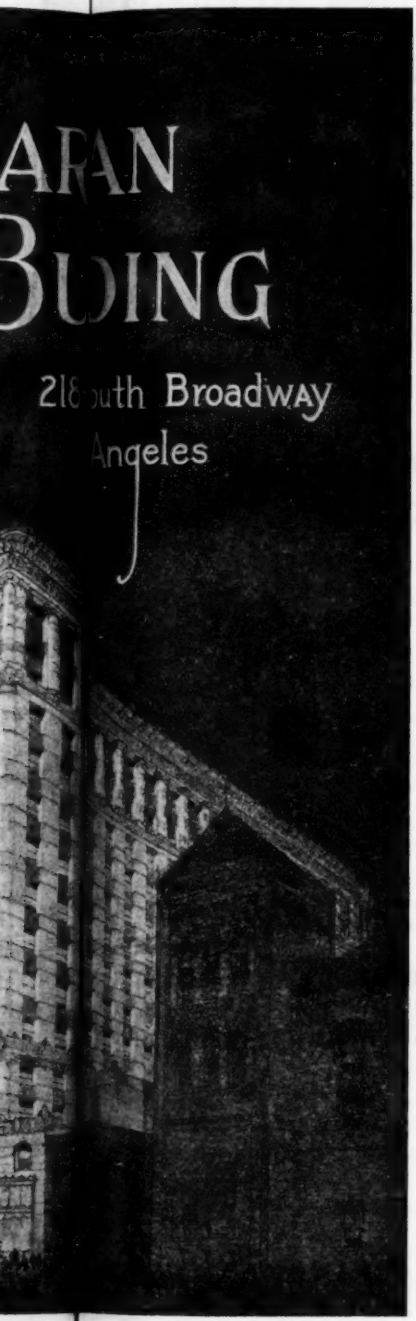
INFORMATION BUREAU:

PNEUMATIC TUBE SYSTEM:

COURT HOUSE SERVICE:

PROCESS SERVER:





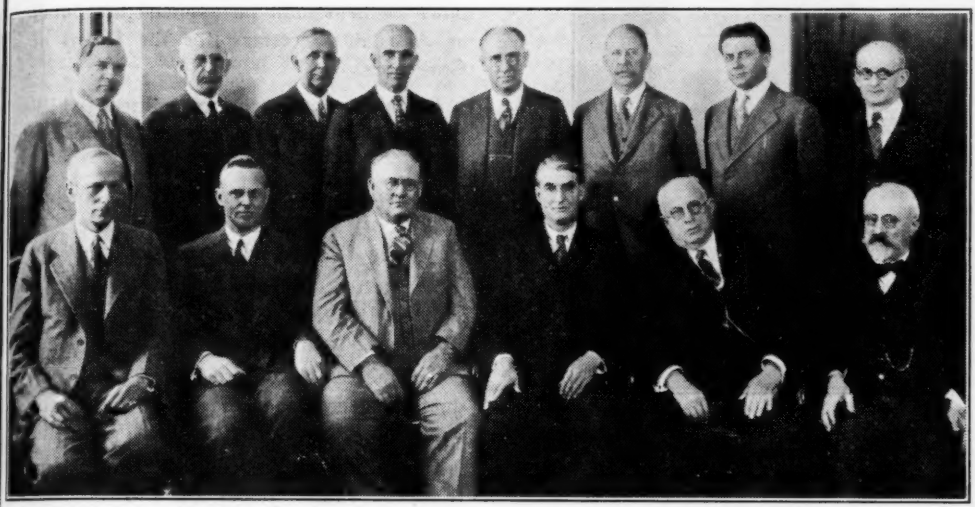
Complete Service

From a questionnaire mailed to the members of the Los Angeles Bar, there has been a wonderful response and considerable enthusiasm is being displayed that a building of this character is going to be erected. ¶A representative of the GUARDIAN BUILDING will call on those members favoring this building with all its service and shall be pleased to give any further information desired. ¶Space for the various suites of offices will be reserved and any special partitioning ordered before or during construction of the building will be done free of charge. ¶Rates per office space, including parking for automobiles and all Special Service given upon application. ¶INQUIRIES FOR SPACE ARE BEING RECEIVED DAILY AND IT APPEARS AS IF ALL SUITES WILL BE LEASED BEFORE COMMENCING CONSTRUCTION OF THE NEW GUARDIAN BUILDING.

Apply BROADWAY OFFICES, INC.
Owner
1222 Commercial Exchange Bldg.
Phone TRinity 2939

Or, FINANCE BROKERAGE CO.,
Agent
1018 Story Bldg.
Phone VAndike 9947

BOARD OF GOVERNORS, CALIFORNIA STATE BAR



In the top row are: Jesse W. Carter, Redding; Frank James, Los Angeles; Charles A. Beardsley, Oakland; Thomas C. Ridgeway, Los Angeles; Lawrence F. Puter, Eureka; O. K. Cushing, San Francisco; Kemper Campbell, Los Angeles; and David M. Burnett, San Jose.

Lower row: Albert A. Rosenshine, San Francisco; Walter H. Stammer, Fresno; J. M. Inman, Sacramento; Joseph J. Webb, San Francisco; W. J. Hunsaker, Los Angeles; Eugene Daney, San Diego.

Absent from picture: John J. McDonald, Alameda.

The Board of Governors will meet in Los Angeles Friday and Saturday, January 20 and 21, and will be guests of honor of Los Angeles Bar Association at the monthly meeting of the Association at the Chamber of Commerce the evening of January 20.

LOS ANGELES OFFICE OF BOARD OF GOVERNORS— M. MILES DODGE SECRETARY

The Los Angeles headquarters of the California State Bar have just been opened with offices at Suite 618-21 Chester Williams Building, Telephone, MUtual 6048. The offices will be in charge of M. Miles Dodge, Assistant Secretary at Los Angeles for the Board of Governors of the California State Bar.

A native of Maine, Mr. Dodge came to this state in 1906, and has since that time maintained his domicile in California. Mr. Dodge received his academic and legal education at George Washington, National, and Harvard Universities, being of the class of 1902 at Harvard. He possesses the degrees of A.B. and L.L.B., and in addition had a year of graduate work at Harvard University toward a M.A. degree.

He was admitted to the bar of California in 1908, on examination. In 1912 he entered the service of the United States government as attorney for the government in

M. MILES DODGE,
Assistant Secretary to Board of Governors, California State Bar.

naturalization cases. To this work he has since devoted the major portion of his time, establishing an excellent record of legal service.

For several years, as attorney for the federal government, he tried naturalization cases in the state and federal courts of the Pittsburg district, embracing the western part of Pennsylvania, western part of New York, all of Ohio, West Virginia, and Maryland, and the eastern part of Kentucky; and afterwards was engaged in similar activity in the six states of the New England district.

In his legal work for the federal government, Mr. Dodge removed to San Francisco in January, 1926. In October following, he was made Designated Examiner, acting for the United States District Court in the hearing of naturalization cases, which office he held until he assumed his duties as Assistant Secretary for the Board of Governors.

Included among the committees which Secretary Dodge will serve are the following:

Committee on Number and Personnel of Board of Bar Examiners; Charles A. Beardsley of Oakland, Chairman.

Committee on Requirements for Admission to Practice; O. K. Cushing of San Francisco, Chairman.

Committee on Rules of Professional Conduct; Eugene Daney of San Diego, Chairman.

Committee on Procedure in Disciplinary Matters; Frank James of Los Angeles, Chairman.

Committee on Co-operation with Local Bar Associations and Administrative Committees; Kemper Campbell of Los Angeles, Chairman.

Committee on Rules; Thomas C. Ridgeway of Los Angeles, Chairman.

Committee on Headquarters in Los Angeles; Thomas C. Ridgeway of Los Angeles, Chairman.

Committee on Office Personnel; Albert A. Rosenshine of San Francisco, Chairman.

Committee on Finance; J. M. Inman of Sacramento, Chairman.

Committee on State Bar Journal; Charles A. Beardsley of Oakland, Chairman.

Committee on Legislative Committee; O. K. Cushing of San Francisco, Chairman.

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.*

Opinion by Committee on Grievances

The Committee on Grievances of Los Angeles Bar Association has recently rendered an opinion which we feel should be called to the attention of every member of the bar. The opinion is based upon the following facts:

An attorney at law, hereinafter designated as the respondent, had been employed by a woman, hereinafter referred to as the complainant, to act as her attorney in a divorce suit. In such capacity, the respondent collected for the complainant $20,000.00, this being the amount of the stipulated sum allowed her by the court in lieu of support. A check for this sum was made payable to the respondent on the order of the client, and was deposited in the bank account maintained by said attorney as "trustee." The complainant acquiesced in this deposit. Immediately thereafter, respondent paid over to complainant the sum of $2,500.00.

A few days later, he induced his client to invest $5,000.00 in the stock of a certain hospital association of which corporation the respondent was the manager and a large stockholder. This investment was made pursuant to the terms of a contract between respondent, complainant and a third party by the terms of which the third party was to act for complainant as a director in the corporation. According to the by-laws of the corporation, each director was to receive a salary of $3,000.00 a year, and by the contract, the third party agreed upon receiving the $3,000.00 yearly salary, to deduct therefrom charges for his services in acting for complainant as a director, such charges to be at the rate of $10.00 for each directors' meeting attended by him, and to pay over the balance to her.

About two weeks after the complainant had invested this money in the corporation, the respondent borrowed from her the sum of $5,000.00 on his unsecured promise to repay the same in ninety days.

Shortly afterwards, he made a computation of fees and expenses, of moneys previously paid by him to the complainant, and of the sums chargeable against himself on the loan and on the investment above referred to. By this statement, he made a charge for attorney's fees of $5,500.00, and charges for detectives and miscellaneous expenses of something over $800.00. The figure arrived at as the balance due the complainant out of the $20,000.00 was the sum of $1,171.35. He thereupon gave her a check for this balance.

The hospital association subsequently failed, no director's salary was ever paid by the corporation, and the investment was a total loss. Of the sum of $5,000.00 loaned the respondent, he had, at the time of the hearing, repaid complainant $2,890.00 in numerous sums and in varying amounts as he was able to earn the money.

Additional facts of the case are set forth in the opinion of the Committee on Grievances.

The opinion and recommendation of the Committee is as follows:

ATTORNEY'S FEES

"Complaint is made by the client that the fee charged is excessive. Cognizance of this complaint was taken on the basis of an inquiry to determine whether the fee was so excessive as to be unconscionable. The finding is that it was not an unconscionable fee. While it was a large fee considering the nature of the case it was not excessive to the point of raising the presumption of dishonesty on the part of the attorney. The divorce case was bitterly contested, there being reciprocal charges of cruelty and adultery. Plaintiff, respondent's client, prevailed in the action after an extended trial involving not only the question of a divorce but the value, extent and character of ownership of the property held by her husband. The property was found to be the separate estate of the husband and an allowance of $250.00 per month was ordered for the support of the wife with an additional $50.00 per month for the support of the child, and the residence of the parties of some $10,000.00 or $12,000.00 in value was set aside to complainant by the interlocutory decree. The interlocutory decree was subsequently modified by striking out the allocation of this property to her upon the ground that the decree in that respect was not supported by the findings which declared that parcel of real property together with the others involved to be the husband's separate estate.

"After an application by complainant seeking the sum of $50,000.00 in lieu of the installment support and as a result of a number of conferences between the attorneys, an amount of $20,000.00 was agreed upon and was to be paid to complainant in cash in lieu of all other support. The services rendered by the respondent were well performed and they were unquestionably extended and arduous. In addition to these facts, his client admitted that she made no complaint about the fee, although she thought then as she does now, that it was excessive. It is our conclusion that the size of the fee calls for no further discussion. * * * *.

INVESTMENT IN THE HOSPITAL ASSOCIATION

"Without reviewing the facts extensively as to the history and condition of this hospital association, it will perhaps be sufficient to set them forth briefly. This association was organized for profit under a scheme to sell memberships entitling the holder to medical services on the payment of a weekly or annual charge to the association. It had been under way for several months prior to the time that complainant's money was invested in it. At the time of her investment it had some one thousand members and was paying expenses. It was, however, considerably in debt, with assets of some $10,000.00 or $12,000.00 and liabilities of something like $25,000.00. The corporation was in serious disagreement with its promoter and former manager whose place the respondent had recently assumed, and it was threatened with suit for salary claimed by the former manager whose debt to the extent of some $1,100.00 was admitted by the association. The respondent evidently considered the threatened suit to be of some merit as seriously threatening the welfare of the corporation. He did not put complainant's money in the treasury of the corporation in one check, but paid it out over a period of months in meeting current expenses of the organization. Out of the total capital of $500,000.00, the respondent was getting $100,000.00 in promotion stock, and the organizer of the corporation, $100,000.00; and each of nine directors was to get $25,000.00 worth of stock for a cash consideration which seems to have been more or less elastic—the ones who came in first putting up a comparatively small amount of money and those who came in later putting up about $5,000.00 apiece. Without the books of the corporation, no one seemed to be able to testify as to what was actually paid for this stock, but the result was that 425,000 shares of stock were issued to the parties mentioned and were placed in escrow. It was not the purpose of the corporation to sell any stock to the public. It was expected that the funds paid in by the directors would put the business upon a paying basis. According to the by-laws of the corporation, each director was to receive a yearly salary of $3,000.00. The directors authorized a salary to the respondent of $1,000.00 per month. None of these salaries were ever paid, for the good and sufficient reason that there was no money with which to pay them. The complainant testified that she knew nothing of the internal affairs of the corporation at the time she consented to respondent's making the investment for her. The respondent testified that she knew all about them. Neither one is corroborated, but we are satisfied that complainant would have made the investment if she had known fully of the condition of the corporation, and the stock to be issued, and other material facts. It is plainly evident from her testimony that she relied implicitly on the respondent. She had known him for many years. Their families had been friends, and she was entirely willing to trust her funds to him to invest in such manner as he saw fit. Of course she did believe that she would receive the salary of $3,000.00 a year, and that she was told that the investment would be a good one for her and would produce satisfactory returns. Obviously, we must look behind this highly unsatisfactory and unwise investment of the client's funds for the purpose that impelled the attorney to make the investment. The respondent would not and did not directly profit by the investment. He received no commission or other remuneration for procuring the investment to be made by his client. As the holder of $100,000.00 worth of stock of the corporation, he would, of course, profit through the success of the corporation and indirectly his own interests were served through each investment that was made in the corporation. We believe, however, that the respondent had unbounded faith in the corporation as a money making enterprise, notwithstanding its inauspicious start. On

paper, it figured out to be as profitable as the business of breeding fur bearing Belgian hares. Even Dr. Sellers would have been dazzled by the radiant prospects of this hospital association, memberships in which were expected to rapidly rise to the number of fifty thousand, giving the corporation a net profit of something like one million dollars a year, with all the remainder of the inhabitants of the globe possessed of the ability and inclination to pay forty cents per week as prospective members. The memberships proved unsaleable, but in the course of the sales efforts which were made and to keep the corporation alive, the respondent invested something over $7,000.00 in cash of his own funds in the corporation; that is to say, he loaned that amount of money to the corporation without security, to be repaid without interest. None of this was ever repaid. The respondent also devoted a great amount of time to the affairs of the corporation for a period of at least a year after the investment of the complainant's funds, all at a considerable loss to himself, with a view, of course, to putting the corporation on its feet, and ultimately profiting thereby. We cannot see in this transaction anything except a foolish, misguided, but nevertheless, honest investment of a client's funds. The thing was speculative to the point of being hazardous, but we are strongly of the opinion that the respondent honestly believed he was making a wise use of his client's funds. Wisdom, or even good judgment in business matters, however desirable an attribute in a lawyer's qualifications, is a thing apart from integrity and fidelity to the interest of the clients. We cannot condemn the respondent's motives in this transaction, and we do not condemn his want of judgment any more than he himself condemns it.

THE LOAN OF $5,000.00 TO RESPONDENT

"In inducing the complainant to loan him $5,000.00, the respondent did not, so far as the evidence shows, misrepresent his financial condition or worth or his ability to repay it. His payments on account are sufficient evidence of an honest intention to repay it. The failure of the hospital association and the neglect of his law business undoubtedly seriously crippled him financially. It would serve no purpose to discuss the agreement the respondent gave the complainant at the time the loan was made. The transaction was fairly entered into, however inadvisable it was for respondent to borrow money from his client, who could ill-afford to lose or to wait for it any considerable period.

CONCLUSION

"There is nothing in the case calling for a disbarment accusation. The hearing before the Committee has unquestionably brought home to respondent in a forcible manner his grave mistake in the ill-advised investment of his client's funds. There is no doubt that respondent has taken the financial misfortunes of his client much to heart. At the conclusion of the hearing, he promised to repay the balance of the loan and furthermore, to re-imburse complainant fully for her loss through the investment in the hospital association. We do not doubt that he would have reduced to writing his obligation to repay the latter sum to the complainant if he could have agreed with her present attorneys upon a time of payment. It may well be disputed whether it is a legal obligation and this department of the Committee would seriously object to the use of the disbarment accusation for the purpose of enforcing the payment of a legal—to say nothing of a moral—obligation.

There being nothing to justify a disbarment accusation, the question remains whether the proceedings should be dismissed or whether there should be a censure administered to respondent by the Board of Trustees or by the Court. This question, it seems to us, is fully answered by the attitude of the respondent throughout the hearing, by his expressions of regret over the transactions outlined above, and by his intention to repay complainant the amount of her losses. His attitude throughout the hearing was quite convincing of his honest intentions throughout all of the transactions. If he had assumed an attitude toward the Committee or toward the client of indifference or defiance, or if he had not freely admitted his use of poor business judgment and an intention to rectify his mistakes, it would be a different matter. The hearing itself has accomplished everything that a censure could accomplish and we believe that inasmuch as the censure could not be based upon any act of dishonesty or misconduct or unfairness, but could only point out to respondent the in-

advisability of investing client's funds in anything but sound enterprises, it would serve no useful purpose and would only humiliate the respondent over transactions as to which he already feels and has expressed deep regret and we therefore recommend that the proceeding be dismissed."

Respectfully submitted,
CLEMENT L. SHINN
CLIFFORD E. HUGHES
B. F. WOODARD

Adopted as the report of the General Grievance Committee and signed on their order in open meeting, September 26, 1927.

EARLE M. DANIELS,
Vice-Chairman.

OPINIONS BY COMMITTEE ON LEGAL ETHICS

W. JOSEPH FORD, *Chairman*

GURNEY E. NEWLIN
JOHN O'MELVENY
THEODORE T. HULL
JOHN BIBY

45. HAND-WRITING EXPERT RECEIVING FEE CONTINGENT UPON JUDGMENT IN FAVOR OF PARTY IN WHOSE BEHALF HE TESTIFIES.

The Ethics Committee has been asked to express an opinion upon the query following: "Is it proper for a hand-writing expert to receive a fee contingent upon a judgment in favor of the party in whose behalf he testifies?"

In our opinion, such conduct is most improper. No witness, duly subpoenaed, is entitled as a matter of right to any compensation for testifying to facts within his knowledge. Such compensation must be authorized by statute. A statute authorizing such compensation is the basis of all the rights of the witness in relation thereto. The right of the state to compel witnesses to testify to facts within their knowledge is based on grounds of public policy. It is immaterial whether an agreement to pay a witness more than the fee allowed by law actually influences his testimony; that such extra compensation might do so is sufficient ground to avoid such an agreement.

Many decisions of respectable authority hold that an expert cannot recover compensation greater than that allowed by law to any other witness when he testifies to facts within his knowledge. Such decisions are premised on the fact that the giving of such testimony is a duty the expert owes to the state in aid of its orderly existence, and in return for which he enjoys its protection and the administration of its laws in his behalf. However, where special investigation and work is required to ascertain facts upon which to base an opinion, the expert may receive an extra compensation.

The query at bar bears directly upon the method of determining such extra compensation. The policy of this state respecting this subject is expressed in Code of Civil Procedure, sec. 1871, which authorizes the court to appoint one or more experts to *investigate* and testify. The court is also authorized to fix such expert's compensation for the investigation made by him. It has been decided by many courts that agreements fixing compensation of witnesses in a manner different or in an amount greater than that authorized by law, are void. There is also most respectable authority that an agreement to pay a witness a bonus or other extra compensation contingent on success, is illegal and void.

It is the opinion of the Committee that expert witnesses appointed by the court pursuant to Code of Civil Procedure, sec. 1871, may be paid extra compensation for special investigations made and work done in order to ascertain facts upon which to base an opinion; that such compensation can be legally determined only by the court and that any agreement to pay an expert extra compensation based upon a judgment in favor of the party in whose behalf he testifies, is illegal and void.

46. HOW FAR A LAWYER MAY GO IN SUPPORTING A CLIENT'S CAUSE.

An opinion has been requested under the following statement of facts:

A claim is submitted to an attorney with instruction to institute suit thereon, which claim the attorney knows is tainted with

usury. Under such circumstances, is it proper for the attorney to institute such an action?

Prior to the passage of the initiative measure which is known as the Usury Law, the fact that a claim was tainted with usury did not make it an illegal or invalid claim, as usury was a defense and could be waived. An attorney might, therefore, properly accept employment to institute an action to enforce a usurious claim.

The Usury Law, however, definitely provides that any agreement or contract of any nature in conflict with the provisions of said law shall be null and void and no action at law to recover interest in any sum shall be maintained. It moreover provides that a person charging illegal interest shall be guilty of a misdemeanor. It is improper for a lawyer to attempt to enforce a claim which is illegal.

MEETING OF CIVIL PROCEDURE SECTION

The last regular meeting of the Civil Procedure Section of Los Angeles Bar Association was held at the Chamber of Commerce dining room, January 10, 1928, at 6:00 p.m.

Chairman George E. Waldo suggested the following matters of suggested legislation for the consideration of the committee:

1. A provision for the selection or appointment of a surrogate clerk to dispose of all uncontested probate matters.

2. A provision to eliminate the cross-complaint as a pleading, and to substitute therefor a plea in the nature of a counter-claim requiring no answer.

3. A provision for the abolition, or at least a limitation of, the functions of a demurrer.

4. A provision to make the jurisdiction of the municipal court exclusive in all actions involving $1,000.00 or less, instead of concurrent with the superior court.

5. A provision that attachments should issue only in cases of fraud or absconding debtors.

6. A provision that a defendant who conceals himself for the purpose of avoiding service of summons, could be served by leaving a copy of the summons and complaint with any person of mature years at his residence, and by mailing an additional copy of the summons and complaint addressed to said defendant at such place of residence.

7. A provision that notice of sale under trust deeds be served upon the maker, as well as recorded.

These various proposals were discussed in a general way, and definite action on each of them is to be taken at a later date.

Mr. Kemper Campbell, president of the Association, then addressed the Committee on the subject of Procedural Reform. In his address, Mr. Campbell outlined the plan proposed by its advocates, and suggested that this be the subject of consideration at a meeting of the Bar Association in the near future. A general discussion by members of the Committee followed, which was participated in by every member present.

The following resolution was adopted:

"RESOLVED, that this Section approve the regulation of procedure by rule of court."

Reports of various sub-committees, copies of which will be mailed to the members, were filed with the chairman.

Respectfully submitted,

A. H. SWALLOW,
Secretary.

Is Duty Greater Than Conscience?

By EZRA NEFF *of the Los Angeles Bar*

If you were a sailor rowing a small boat overloaded with survivors of a shipwreck in mid-ocean, and the boat began to leak, and the wind began to rise, and the sea became heavy, and the officer in charge ordered you and seven others of the crew to throw some of the thirty passengers overboard to save all from perishing, and no method of selection was devised or permitted, would you obey orders and prolong your life or would you refuse compliance and die?

Such was the unusual and trying situation which had confronted the defendant in the early, interesting case, United States v. Holmes, 1 Wallace Jr's. Reports, page 1, decided in 1842. Under circumstances as above outlined he had obeyed the order of the officer. Afterwards he had been rescued and was convicted of homicide. The United States Circuit Court in the foregoing decision affirmed the conviction and the defendant was sentenced to prison.

It appears from the opinion that in March, 1841, the ship *William Brown* left Liverpool for Philadelphia, laden with a heavy cargo and carrying a crew of seventeen and sixty-five passengers—men, women and children. A month later, when off the Newfoundland coast, the ship struck an iceberg near the point where, nearly a century afterwards, the huge *Titanic* on her fourth day out from the same port met a similar fate.

The *William Brown* began rapidly to sink. Its two small boats were lowered and the captain, second mate, seven of the crew and one passenger got into one; into the other crowded the first mate, the remainder of the crew (including the defendant, Holmes, a Finn) and thirty-two passengers. The remainder of the passengers, thirty-one in number, were obliged to remain upon the sinking ship which went down within an hour, and all on board perished.

The Captain ordered the first mate to take charge of the boat in which he, the first mate, was, and the crew of eight promised to obey the mate. Although the least wind would have capsized this boat and she leaked through an inch and one-half hole, the crew and passengers managed to keep her afloat for forty-eight hours. Any collision with ice would have sunk the boat, and the first mate called to the captain that the boat was unmanageable, and suggested that he "throw some overboard" but was admonished to "let it be the last resort." The people were half naked and huddled together "like sheep," and the slightest shifting in the boat would have brought water over the sides. *It appeared to be certain death for all.*

Thirty hours after the wreck, it having begun to rain and the sea growing heavier as darkness approached, the first mate in despair shouted, "Men, you must go to work." There being no response by the crew, he again so commanded, adding that unless they did, "we must all perish." Thereupon the defendant cast overboard fourteen male passengers, but allowed members of the crew and the negro cook to remain in the boat. No lots were drawn. *Indeed, there was no principle of selection.*

The holding of the Circuit Court was as follows:

1. Under such conditions, man is not

(Continued on Page 29)

Book Reviews

HARRY GRAHAM BALTER *of the Los Angeles Bar*

Lecturer in Law at the College of Law, Southwestern University

THE ELEMENTS OF CRIME, by Boris Brasol, M.A.: Introductions by John H. Wigmore and William A. White, M.D.; 1927, 372 pages, $5.00; Oxford University Press, American Branch, New York.

One making even a superficial examination of crime and criminology is very soon confronted with the chaotic and clashing factors which must be considered, and a deeper study merely discloses more bewildering variants. *The Elements of Crime* is a sincere effort to bring some order out of this confusion of ideas which has resulted in our admittedly archaic system of criminal law and our uncertain attitude towards the criminal. What is a crime today may be praiseworthy tomorrow. The man who yesterday was regarded as a wrongdoer may today be considered as mentally incapable of doing a wrong. There are those who would make almost every act a result of some involuntary nervous reaction or brain pressure and there are others who, to protect the social weal, would incarcerate every individual merely because he did the wrongful act. A systematic and rational exposition of these, and more troublesome topics in criminology could not be accomplished by a lawyer alone, nor even less by a psychiatrist. Only a person such as Mr. Brasol, who was prosecuting attorney in the St. Petersburg Supreme Court and who is a recognized authority on psychiatry and mental phenomena could hope to achieve any degree of success. That Mr. Brasol has made a worth-while contribution to the field of criminology should be apparent to anyone making a study of his book.

The problem of criminology is handled in a logical way, the first half of the book being devoted to Crime as a Social Phenomenon and the second half to the Psycho Physical Nature of Crime. The author's conception is that there is a social "rhythm" to which the community is attuned by its elements—among which are environment, influence of the press, of religion, and of the family. What happens when this rhythm is "jarred" is a discord, just as a jar in music or color results in discord, and this discord in Criminology is Crime. The individual, if he pushes his personal desire sufficiently, becomes "anti-social" and is regarded as a wrong-doer. "Crime," it is stated, "in its sociologic sense, being originated by the egocentric instinct, usually evinces the centrifugal nature of the deed."

With this as its central theme, the book discusses the influence of economic pressure, and of religion, family, education, and press on the individual as developing or limiting his anti-social instincts. Mr. Brasol's views on the modern family, and the effect of alcohol and of prohibition on crime are especially illuminating.

The notion that there are "born criminals" is belittled. Heredity may weaken the individual, but he will not be a criminal until he acquires criminal habits. These criminal habits may be instinctive or volitional. A volitional habit, it is pointed out, is such as where a bookkeeper, after making his original false entry, grows so accustomed to do it that he continues to make false entries as a matter of habit; an instinctive habit is such as kleptomania or pyromania.

The various elements which cause these criminal habits are then enquired into. After a discussion of heredity, instincts, and anthropological structures, the subject of insanity is considered at length. The various dementias and perversions are clearly brought out and the conception of individual irresponsibility and psychic behaviorism, so popular today, is severely denounced.

The author's elaborate analysis of McNaughten's case is especially interesting to the lawyer. Its "right and wrong" rule is criticized as embodying old psycho-pathological notions and its sociological viewpoint is attacked as based on the unsubstantial concepts of "right" and "wrong."

Anyone expecting to find a complete solution to our criminal problems in this book will be disappointed. Mr. Brasol offers none. His efforts are confined to establishing a rationale of the field. This he has done. Even though *The Elements of Crime* is only intended as a scholarly integration of the constituents of crime, yet the discerning lawyer will find in it many sug-

gestions as to where the difficulties lie. For example, the policy of allowing the jury to decide on insanity and the hiring of alienists on both sides is decried. Likewise the undue interference of the legislative organs with the legitimate egocentric desires of the individual is characterized as dangerous and self-destroying.

The attorney planning some precise or clever way of snatching his client from the toils of the law will waste his time reading *The Elements of Crime*, but the lawyer who wants a comprehensive view of the subject, and a reconciliation, as Dean Wigmore puts it in the introduction to this book, of the "principles and experience of psychology with the principles and experience of criminal law" can well afford to read it.

WILLIAM E. BALTER.

NEW ARBITRATION LAW

(Continued from Page 10)

of the nearest tribunal. Now mark the result of this policy. In 1924 and 1925 there were twenty-three thousand cases submitted to these tribunals for decision involving $4,650,000.00. Twelve thousand, six hundred and seventy-five of them were settled without the necessity of an award. Ten thousand, three hundred and twenty-five were actually tried by the arbitrators. Most of them were decided within a few days after submission.

If you will refer to the debates before the American Bar Association you will find that one of the arguments presented against arbitration was that the law itself provided for so many appeals to the courts that more delays would result than occur in an ordinary lawsuit. Let us see what the experience of Mr. Hays was. He says that during the first year of the plan four disputants were dissatisfied and appealed their cases to the courts. In 1925, 17 cases were taken into court. In other words only 21 cases out of 10,325 decided were taken on appeal to the courts.

Mr. Hays says, "I am satisfied that next to war, litigation is the largest single item of preventable waste in business." He argues that not only does arbitration save this but by arbitration differences are adjusted on an equitable basis frequently independent of the contract. He illustrates by cases where producers have sold exhibitors films unsuited to their location or in excess of their possible needs. Frequently these differences are adjusted by the substitution of different films or by the reduction in the amount of the contract. Needless to say, if the controversies had been determined by the courts no adjustments could have been made but the losing party would have suffered the consequence of his improvident agreement.

Mr. Martin Gang writing in the *California Law Review* for May, 1927, says that in California more than thirty organizations are requiring arbitration of disputes arising under their contracts. Some of these groups have arbitration tribunals where the arbitrators are selected by or for the disputants for the particular controversy, while in others arbitrators are chosen by the trade or organization to hear all disputes arising, and are composed of those who have expert knowledge of the trade customs, values of goods and conditions existing in the business in which the dispute arises.

He says: "In the presentation of evidence, the rules which bind our courts in a Gordian Knot and are a token of the contempt of the law or the intelligence of juries present no hindrance. The arbitrators may admit any evidence and may believe what they please. The archaic 'hearsay' and 'best evidence' rules are most objectionable to business men since they prevent the introduction of books and records which are necessary in modern bookkeeping and accounting practice * * * *. In some cases the objection of the profession has been based on the fear of competition. Does arbitration lessen the practice of the lawyers? The development of arbitration in England may be enlightening. Far from limiting the lawyers' business it has opened up a lucrative field for those men who were keen enough to give business what it wanted —speed and efficiency. Lawyers there take

an active part in the presentation of arbitrations, and certain Kings' Counsel have become noted as arbitrators in special lines. Many cases which would never be litigated are arbitrated. Cases are cleaned up in much less time and the lawyers' net profit increases although individual returns may decrease. In any event, the business world wants to arbitrate, and it does arbitrate, and it behooves the lawyer to get into step with business policy."

PRESIDENT'S PAGE

(Continued from Page 13)

effective co-operation of the Judicial Council in awarding to Los Angeles County a considerable number of outside judges is also a very helpful development. Presiding Judge McLucas is devoting himself with every indication of exceptional executive ability and the entire bench is lending wholehearted assistance, with very substantial results. Judge McLucas will call the usual conference meetings between the representatives of the bar and the bench, and Los Angeles Bar Association will assist in every way possible in the serious undertaking of relieving overburdened calendars.

COURT REPORTERS

On account of the small and infrequent per diems paid court reporters has of late been impossible to secure reporters in a number of departments at various times, thus wasting the time of the court, litigants, witnesses and attorneys. Some method had to be devised to relieve the situation. It has been suggested that a distribution of default divorce cases to various departments would not only save the time of one department of the court without interference with the regular business of the other departments, but these cases, being heard before 10:00 o'clock a.m. the reporters could be paid an extra allowance for them.

It would not be regarded as an undue burden to litigants in default cases to pay a reporter's fee of $2.50.

In the absence of some permanent readjustment in the system of distributing the work of the reporters, the suggestion seems to solve, temporarily at least, a perplexing problem.

KEMPER CAMPBELL.

January 12, 1928.

IS DUTY GREATER THAN CONSCIENCE?

(Continued from Page 26)

reduced to a "state of nature" so that the sailor may rely upon the law of self-preservation; his duty as the guardian of a passenger persists even to obligating his permitting the passenger the sole use of a floating plank when it will not support both the sailor and the passenger.

2. No command of a superior officer of the carrier can justify what would otherwise (but for the command alone) be murder.

3. While a sufficient number of the crew to man the boat must at all events be saved, those supernumerary thereto must be the *first* to be dispatched.

4. Homicide is not justified except when dissolution appears sure and imminent; and then a method of selection (such as drawing of lots) must be had to decide those "to go," except where urgent emergency does not permit.

5. It is better to die than to kill.

AGE
id
Calif.
1067